

§ 5.850

with Generally Accepted Accounting Principles, HUD may, on a case-by-case basis, require audited financial statements from the operator. With respect to facilities with FHA-insured or HUD-held Section 232 mortgages, HUD may request more frequent financial statements from the borrower and/or the operator on a case-by-case basis when the circumstances warrant. Nothing in this section limits HUD's ability to obtain further or more frequent information when appropriate pursuant to the applicable regulatory agreement.

(d) *Reporting compliance dates.* Entities (or individuals) that are subject to the reporting requirements in this section must commence compliance with these requirements as follows:

(1) For PHAs listed in paragraphs (a)(1) and (a)(2) of this section, the requirements of this section will begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

(2) For entities listed in paragraphs (a)(3) and (a)(4) of this section, the requirements of this section will begin with those entities with fiscal years ending December 31, 1998 and later. Entities listed in paragraphs (a)(3) and (a)(4) of this section with fiscal years ending December 31, 1998 that elect to submit their reports earlier than the due date must submit their financial reports as required in this section. On or after September 30, 1998 but prior to January 1, 1999, these entities may submit their financial reports in accordance with this section.

(3) The requirements of this section apply to the entities listed in para-

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graph (a)(5) of this section with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically.

(4) Entities described in paragraph (a)(6) of this section must comply with the requirements of this section with respect to fiscal years commencing on or after the date that is 60 calendar days after the date on which HUD announces, through FEDERAL REGISTER notice, that it has issued guidance on the manner in which these reports will be transmitted to HUD.

(e) *Limitation on changing fiscal years.* To allow for a period of consistent assessment of the financial reports submitted to HUD under this subpart part, PHAs listed in paragraphs (a)(1) and (a)(2) of this section will not be allowed to change their fiscal years for their first three full fiscal years following October 1, 1998.

(f) *Responsibility for submission of financial report.* The responsibility for submission of the financial report due to HUD under this section rests with the individuals and entities listed in paragraph (a) of this section.

[63 FR 46591, Sept. 1, 1998, as amended at 64 FR 1505, Jan. 11, 1999; 64 FR 33755, June 24, 1999; 65 FR 16295, Mar. 27, 2000; 67 FR 53451, Aug. 15, 2002; 77 FR 55134, Sept. 7, 2012; 78 FR 57060, Sept. 17, 2013]

Subpart I—Preventing Crime in Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

SOURCE: 66 FR 28792, May 24, 2001, unless otherwise noted.

GENERAL

§ 5.850 Which subsidized housing is covered by this subpart?

(a) If you are the owner of federally assisted housing, your federally assisted housing is covered, except as

provided in paragraph (b) or (c) of this section.

(b) If you are operating public housing, this subpart does not apply, but similar provisions applicable to public housing units are found in parts 960 and 966 of this title. If you administer tenant-based assistance under Section 8 or you are the owner of housing assisted with tenant-based assistance under Section 8, this subpart does not apply to you, but similar provisions that do apply are located in part 982 of this title.

(c) If you own or administer housing assisted by the Rural Housing Administration under section 514 or section 515 of the Housing Act of 1949, this subpart does not apply to you.

§ 5.851 What authority do I have to screen applicants and to evict tenants?

(a) *Screening applicants.* You are authorized to screen applicants for the programs covered by this part. The provisions of this subpart implement statutory directives that either *require* or *permit* you to take action to deny admission to applicants under certain circumstances in accordance with established standards, as described in this subpart. The provisions of this subpart do not constrain your authority to screen out applicants who you determined are unsuitable under your standards for admission.

(b) *Terminating tenancy.* You are authorized to terminate tenancy of tenants, in accordance with your leases and landlord-tenant law for the programs covered by this part. The provisions of this subpart implement statutory directives that either require or permit you to terminate tenancy under certain circumstances, as provided in 42 U.S.C. 1437f, 1437n, and 13662, in accordance with established standards, as described in this subpart. You retain authority to terminate tenancy on any basis that is otherwise authorized.

§ 5.852 What discretion do I have in screening and eviction actions?

(a) *General.* If the law and regulation permit you to take an action but do not require action to be taken, you may take or not take the action in accordance with your standards for ad-

mission and eviction. Consistent with the application of your admission and eviction standards, you may consider all of the circumstances relevant to a particular admission or eviction case, such as:

(1) The seriousness of the offending action;

(2) The effect on the community of denial or termination or the failure of the responsible entity to take such action;

(3) The extent of participation by the leaseholder in the offending action;

(4) The effect of denial of admission or termination of tenancy on household members not involved in the offending action;

(5) The demand for assisted housing by families who will adhere to lease responsibilities;

(6) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the responsible entity's action on the integrity of the program.

(b) *Exclusion of culpable household member.* You may require an applicant (or tenant) to exclude a household member in order to be admitted to the housing program (or continue to reside in the assisted unit), where that household member has participated in or been culpable for action or failure to act that warrants denial (or termination).

(c) *Consideration of rehabilitation.* (1) In determining whether to deny admission or terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, you may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, you may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.